

TERMS OF BUSINESS FOR THE SUPPLY OF TEMPORARY WORKERS' SERVICES

1. DEFINITIONS:

'Agency Worker' means the individual who is introduced by the Employment Business to provide services to the Hirer;

'Agency Workers Regulations'/'AWR' means the Agency Workers Regulations 2010;

'Assignment' means the services to be performed by the Agency Worker for the Hirer for a period of time during which the Agency Worker is supplied by the Employment Business to work temporarily for and under the supervision and direction of the Hirer;

'AWR Claim' means any complaint or claim to a tribunal or court made by or on behalf of the Agency Worker against the Hirer and/or the Employment Business for any breach of the Agency Workers Regulations;

'Calendar Week' means any period of seven days starting with the same day as the first day of the First Assignment;

'Charges' means the hourly charges of the Employment Business calculated in accordance with clause 6 and as may be varied from time to time in accordance with these Terms;

'Client' means the person, firm or corporate body together with any subsidiary or associated company as defined by the relevant Companies Act or other prevailing legislation requiring the services of the Temporary Worker;

'Comparable Employee' means as defined in Schedule 1 to these Terms;

'Conduct Regulations' or 'Regulations' means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended) or the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (as amended);

'Confidential Information' means any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Hirer or Employment Business or their business or affairs (including but not limited to these Terms, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or medium whether disclosed or granted access to whether in writing, orally or by any other means, provided to the Agency Worker or any third party in relation to the Assignment by the Hirer or the Employment Business or by a third party on behalf of the Hirer whether before or after the date of these Terms together with any reproductions of such information in any form or medium or any part(s) of such information;

'Control' means (a) the legal or beneficial ownership, directly or indirectly, of more than 50% of the issued share capital or similar right of ownership; or (b) the power to direct or cause the direction of the affairs and/or general management of the company, partnership, statutory body or other entity in question, whether through the ownership of voting capital, by contract or otherwise, and 'Controls' and 'Controlled' shall be construed accordingly;

‘Data Protection Laws’ means the Data Protection Act 1998, any applicable statutory or regulatory provisions and all European Directives including the General Data Protection Regulation (“GDPR”) and regulations in force from time to time relating to the protection and transfer of personal data;

‘Employment Business’ means Markwa Care Personnel Limited, 160 City Road, Islington, London, EC1V 2NX.

‘Engagement’ means any employment or use of the Temporary Worker, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, an agency, license, franchise or partnership arrangement or any other engagement;

‘First Assignment’ means:

- (a) the relevant Assignment; or
- (b) if, prior to the relevant Assignment:
 - (i) the Agency Worker has worked in any assignment in the same role with the relevant Hirer as the role in which the Agency Worker works in the relevant Assignment; and
 - (ii) the relevant Qualifying Period commenced in any such assignment, that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer);

‘Hirer’ means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Agency Worker is introduced;

‘Hirer’s Group’ means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Hirer, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and (b) any company, partnership, statutory body or other entity which from time to time is Controlled by or is under common Control with the Hirer, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006;

‘Introduction’ means the Client’s interview of a Temporary Worker in person or by telephone, following the Client’s instruction to the Employment Business to search for a Temporary Worker; or the passing to the Client of a curriculum vitae or other information which identifies the Temporary Worker and which leads to an Engagement of the Temporary Worker by the Client;

‘Losses’ means all losses, liabilities, damages, costs, expenses whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;

‘Period of Extended Hire’ means any additional period that the Hirer wishes the Agency Worker to be supplied for beyond the duration of the original Assignment or series of Assignments as an alternative to paying a Transfer Fee;

‘Qualifying Period’ means 12 continuous Calendar Weeks during the whole or part of which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work

temporarily for and under the supervision and direction of the relevant Hirer in the same role, and as further defined in Schedule 1 to these Terms;

‘Relevant Period’ means (a) the period of 8 weeks commencing on the day after the last day on which the Agency Worker worked for the Hirer having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the first day on which the Agency Worker worked for the Hirer having been supplied by the Employment Business or 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous assignment;

‘Relevant Terms and Conditions’ means terms and conditions relating to:

- (a) pay;
- (b) the duration of working time;
- (c) night work;
- (d) rest periods;
- (e) rest breaks; and
- (f) annual leave

that are ordinarily included in the contracts of employees or workers (as appropriate) of the Hirer whether by collective agreement or otherwise and including (for the avoidance of doubt and without limitation) such terms and conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation;

‘Remuneration’ includes annual base salary or fees, guaranteed and/or anticipated bonus earnings, allowances, inducement payments and all other taxable emoluments payable to or receivable by the Temporary Worker applicant for services rendered to or on behalf of the Client;

‘Service User Guide’ means Service User Guide as described in Care Standards Act 2000;

‘Social Care Inspectorate’ shall mean, as appropriate, The Care Quality Commission, The Scottish Care Commission or The Regulation and Quality Improvement Authority;

‘Temporary Work Agency’ means as defined in Schedule 1 to these Terms;

‘Temporary Worker’ or ‘Agency Worker’ means the Nurse, Locum or other Temporary Worker supplied by the Employment Business and engaged by the Client for the Assignment;

‘Terms’ means these terms of business (including the attached schedules) together with any applicable Assignment Details Form;

‘Transfer Fee’ means the fee payable in accordance with clause 8 of these Terms and Regulation 10 of the Conduct Regulations;

‘Vulnerable Person’ means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of eighteen; and

‘Working Time Regulations’ means the Working Time Regulations 1998. References to the Working Time Regulations 1998 and the Care Standards Act 2000 shall apply equally to the prevailing legislation in Northern Ireland and Scotland and references to the Criminal Records Bureau (‘CRB’) shall apply equally to Disclosure Scotland and Disclosure Northern Ireland.

2. THE CONTRACT

2.1 These Terms of Business together with the Assignment Detail Form (if any) form the contract between the Client and the Employment Business for the provision of a Temporary Worker's services to the Client and apply to all Assignments. A guide providing full details about the Employment Business's services is available upon request. The Employment Business may also (subject to prevailing legislation) provide details of the qualifications and experience of the Temporary Worker to be supplied to the Client.

2.2 These Terms of Business are deemed to be accepted by the Client by virtue of its request for details on a Temporary Worker, request for an interview or an interview with a Temporary Worker introduced by the Employment Business, or the Engagement of a Temporary Worker introduced by the Employment Business, whichever occurs first.

2.3 Unless otherwise agreed in writing by a director of the Employment Business these Terms prevail over any other terms of business put forward by the Client.

2.4 No variation or alteration of these Terms and Conditions shall be valid unless approved in writing by a director of the Employment Business.

2.5 The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when Introducing Agency Workers for Assignments with the Hirer. However the Client acknowledges that any Contractor operating through a medium other than PAYE and carrying out the Assignment might have opted out of the Conduct Regulations and therefore that none of the Conduct Regulations apply to any Assignments governed by this Agreement. Any Client requiring clarification of this opt-out status for individual workers should contact the Employment Business for details.

3. HIRER OBLIGATIONS

3.1 To enable the Employment Business to comply with its obligations under the Conduct Regulations the Hirer undertakes to provide to the Employment Business details of the position which the Hirer seeks to fill, including the following:

- 3.1.1 the type of work that the Agency Worker would be required to do;
- 3.1.2 the location and hours of work;
- 3.1.3 the experience, training, qualifications and any authorisation which the Hirer considers necessary or which are required by law or any professional body for the Agency Worker to possess in order to work in the position;
- 3.1.4 any risks to health or safety known to the Hirer and what steps the Hirer has taken to prevent or control such risks;
- 3.1.5 the date the Hirer requires the Agency Worker to commence the Assignment;
- 3.1.6 the duration or likely duration of the Assignment.

3.2 The Hirer will assist the Employment Business in complying with the Employment Business's duties under the Working Time Regulations by supplying any relevant information about the Assignment requested by the Employment Business and the Hirer will not do anything to cause the Employment Business to be in breach of its obligations under these Regulations. If the Hirer requires the services of an Agency Worker for more than 48 hours in any week during the course of an Assignment, the Hirer must notify the Employment Business of this requirement before the commencement of the Assignment or at the very latest, where this is not reasonably practicable,

before the commencement of the week in which the Hirer requires the Agency Worker to work in excess of 48 hours.

3.3 The Hirer will comply with its obligations under Regulation 12 (Rights of agency workers in relation to access to collective facilities and amenities) and 13 (Rights of agency workers in relation to access to employment) of the Agency Workers Regulations.

3.4 To enable the Employment Business to comply with its obligations under the Agency Workers Regulations, the Hirer undertakes as soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at the Employment Business's request:

- 3.4.1 to inform the Employment Business of any Calendar Weeks since 1 October 2011 in which the relevant Agency Worker has worked in the same or a similar role with the Hirer via any third party prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment which count or may count towards the Qualifying Period;
- 3.4.2 if, since 1 October 2011, the Agency Worker has worked in the same or a similar role with the Hirer via any third party prior to the date of commencement of the relevant Assignment and/or works in the same or a similar role with the Hirer via any third party during the relevant Assignment, to provide the Employment Business with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by the Employment Business;
- 3.4.3 to inform the Employment Business if, since 1 October 2011, the Agency Worker has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment:
 - 3.4.3.1 completed two or more assignments with the Hirer;
 - 3.4.3.2 completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or
 - 3.4.3.3 worked in more than two roles during an assignment with the Hirer and on at least two occasions worked in a role that was not the same role as the previous role;
- 3.4.4 save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to:
 - 3.4.4.1 provide the Employment Business with written details of the basic working and employment conditions the Agency Worker would be entitled to for doing the same job if the Agency Worker had been recruited directly by the Hirer as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee, such basic working and employment conditions being the Relevant Terms and Conditions;
 - 3.4.4.2 inform the Employment Business in writing whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of a Comparable Employee;
 - 3.4.4.3 if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Employment Business with a written explanation of the basis on which the Hirer considers that the relevant individual is a Comparable Employee; and
 - 3.4.4.4 inform the Employment Business in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant

- Assignment after the Qualifying Period commenced; and
- 3.4.5 save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to provide the Employment Business with written details of its pay and benefits structures and appraisal processes and any variations of the same.
- 3.5 In addition, for the purpose of awarding any bonus to which the Agency Worker may be entitled under the Agency Workers Regulations, the Hirer will:
- 3.5.1 integrate the Agency Worker into its relevant performance appraisal system;
 - 3.5.2 assess the Agency Worker's performance;
 - 3.5.3 provide the Employment Business with copies of all documentation relating to any appraisal of the Agency Worker, including without limitation written details of the outcome of any appraisal and the amount of any bonus awarded; and
 - 3.5.4 provide the Employment Business with all other assistance the Employment Business may request in connection with the assessment of the Agency Worker's performance for the purpose of awarding any bonus.
- 3.6 The Hirer will comply with all the Employment Business's requests for information and any other requirements to enable the Employment Business to comply with the Agency Workers Regulations.
- 3.7 The Hirer warrants that:
- 3.7.1 all information and documentation supplied to the Employment Business in accordance with clauses 3.4, 3.5 and 3.6 is complete, accurate and up-to-date; and
 - 3.7.2 it will, during the term of the relevant Assignment, immediately inform the Employment Business in writing of any subsequent change in any information or documentation provided in accordance with clauses 3.4, 3.5 and 3.6;
- 3.8 Without prejudice to clauses 9.9 and 9.10, the Hirer shall inform the Employment Business in writing of any:
- 3.8.1 oral or written complaint the Agency Worker makes to the Hirer which is or may be a complaint connected with rights under the Agency Workers Regulations; and
 - 3.8.2 written request for information relating to the Relevant Terms and Conditions that the Hirer receives from the Agency Worker as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made to or written complaint or request is received by the Hirer and the Hirer will take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business, in order to resolve any such complaint or to provide any such information in a written statement to the Agency Worker within 28 days of the Hirer's receipt of such a request in accordance with Regulation 16 of the Agency Workers Regulations and the Hirer will provide the Employment Business with a copy of any such written statement.
- 3.9 The Hirer undertakes that it knows of no reason why it would be detrimental to the interests of the Agency Worker for the Agency Worker to fill the Assignment.

4. INFORMATION TO BE PROVIDED BY THE EMPLOYMENT BUSINESS TO THE HIRER

4.1 When Introducing an Agency Worker to the Hirer the Employment Business shall inform the Hirer:

4.1.1 of the identity of the Agency Worker;

4.1.2 that the Agency Worker has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment;

4.1.3 that the Agency Worker is willing to work in the Assignment; and

4.1.4 the Charges.

4.2 Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any Public or Bank Holiday) following, save where the Agency Worker is Introduced for an Assignment in the same position as one in which the Agency Worker had previously been supplied within the previous 5 business days and such information has already been given to the Hirer, unless the Hirer requests that the information be resubmitted.

5. TIMESHEETS

5.1 At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of one week or less or is completed before the end of a week) the Client shall sign the timesheet of the Employment Business verifying the number of hours worked by the Temporary Worker during that period. The Client shall not be entitled to decline to sign a timesheet on the basis that it is dissatisfied with the work performed by the Temporary Worker. In the event that the Client is dissatisfied with the work performed by the Temporary Worker the provisions of clause 12 shall apply.

5.2 Signature of the timesheet by the Client constitutes acceptance that the Temporary Worker's services have been provided for the hours indicated on the timesheet and that such services have been satisfactory. Failure to sign the timesheet does not alter the Client's liability to pay for hours worked. If the Client is unable to sign a timesheet produced for authentication by the Temporary Worker because the Client disputes the hours claimed, the Client shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked. Failure to sign the timesheet does not absolve the hirer of its obligations to pay the charges in respect of the hours worked.

5.3 In the unlikely event of the Temporary Worker or the Employment Business mislaying timesheets this does not alter the Client's liability to pay for hours worked. Notwithstanding this liability in the event of work being claimed in the absence of timesheets the Client agrees to co-operate fully to restore the situation whether by locating Client held copies of the original timesheet, accepting an obligation to check documentation sent in lieu of misplaced timesheets and, in such circumstances, to notify within three weeks of receiving such documentation if the work was either not performed or performed unsatisfactorily. If notice is not given within three weeks the work will be deemed to have been performed satisfactorily and the Client will become liable for full payment for services provided.

6. HOURLY CHARGES

6.1 The Client agrees to pay the Employment Business for the provision of the Temporary Worker's services at the hourly rate as set out herein or as agreed before the Temporary Worker begins work for the Client. The hourly rate is comprised of the Temporary Worker's hourly pay, employer's deemed National Insurance Contributions and any sums due in respect of holiday pay, automatic pension enrolment or any other statutory entitlement of the Temporary Worker plus the Employment Business's fee. The hourly rate is calculated to the nearest quarter of an hour.

6.2 The rates at which charges and the constituents thereof are made shall be as stated in these terms of business. It is acknowledged that these rates may not reflect the exact amounts for which the agency may be deemed to be liable (if at all) but represent the best and most workable approximation of overall costs associated with the obligations in respect of typical agency workers, including all deemed statutory costs (whether payable or not in individual cases). For the avoidance of doubt and other than in the case of pay to the agency worker (where quoted) and commission on all pay these charges are at deemed rates and it is accepted that these may differ from actual liabilities (if any) to third parties. As such the charges are made to all clients irrespective of any corresponding liability which the agency ultimately has. The use of these deemed rates are a best and most workable approximation which gives clarity and consistency to clients as to the quantum of charges which clients will incur.

6.3 The Client shall pay the Employment Business's charges current at the commencement of the Assignment although these may be varied with immediate effect from time to time during the Assignment upon notification to the Client. The charges are invoiced to the Client on a weekly basis and are payable within 7 days. Travelling, hotel and other expenses as may be agreed shall be added to or deducted from the invoice as appropriate.

6.4 The Employment Business reserves the right to charge interest on any overdue amounts at the rate of 4% per annum above the base rate from time to time of Barclays Bank plc's base rate from the due date to the date of actual payment. Further fees may be applied to the account and payable in full should the account be referred to our solicitors for perusal. Persistent requests for copy invoices may also be subject to administration charges at the discretion of Employment Business.

6.5 The Client recognises that the Employment Business has to charge VAT in accordance with prevailing legislation and in accordance with any instruction from HM Revenue & Customs. The Client agrees to pay to the Employment Business all VAT correctly charged or any VAT stated on a later invoice issued in accordance with prevailing legislation or in accordance with instructions by the Revenue & Customs.

7. REMUNERATION, DEDUCTIONS AND STATUS

7.1 The Employment Business is responsible for payment of all remuneration due to the Temporary Worker and for the deduction and payment of National Insurance contributions and PAYE as required by law.

7.2 The Temporary Worker is neither the Client's employee nor that of the Employment Business but is engaged by the Employment Business under a contract for services as a self-employed person to provide services to the Client.

8. INTRODUCTION FEE

8.1 The re-engagement by a Client of a Temporary Worker introduced by the Employment Business, or the introduction by the Client of a Temporary Worker to any third party resulting in an Engagement (or, where applicable, if the Temporary Worker has become incorporated under a limited company, the Engagement of that limited company) renders the Client subject to the payment of an introduction fee calculated as a % of the annual gross taxable remuneration/emoluments payable to the Temporary Worker (as shown below), provided that the Engagement takes place within a period of 14 weeks of the commencement of the Assignment under which the Temporary Worker was last supplied, or (if there was no Assignment) within 3 months of the introduction of the Temporary Worker by the Employment Business, or within 8 weeks of the end of the Assignment under which the Temporary Worker was last supplied. If the 14 week period expires after or is longer than the 8 week post termination period then the 14 week period will apply.

ANNUAL GROSS REMUNERATION	FEE
Up to £10,000	15%
£10,001 - £20,000	17.5%
£20,001 - £30,000	20%
£30,001 - £40,000	25%
Over £40,000	30%

8.2 In the event of any direct Engagement of the Temporary Worker as contemplated in clause 8.1 the Client shall immediately notify the Employment Business of such planned/actual Engagement and provide details of any remuneration payable to the Temporary Worker.

8.3 Where the Client fails to inform the Employment Business of the annual remuneration, the introduction fee will be calculated by multiplying the hourly charge payable by the Client, under Clause 6 above, to the Employment Business by 150.

8.4 As an alternative to becoming liable to the fee referred to in 8.1, 8.2 and 8.3 above the Client may opt to enter into an agreement with the Employment Business to continue paying (or commence paying where no Assignment took place) for the services of the Temporary Worker for a period equivalent to 350 hours at the charge rate prevailing at the time as adjusted for any standard increases during the period of extended hire. As an alternative to paying for the hire of the Temporary Worker the Client may, if agreed to by the Employment Business, pay to the Employment Business a sum of money equivalent to the Employment Business's margin/commission on the 350 hours.

8.5 In order to activate the alternative in 8.4 above the Client must inform the Employment Business in writing that a re-engagement or introduction (as per 8.1) has been agreed and that the Client wishes to commence the period of extended hire. In the absence of any such notification the fee arrangement referred to in 8.1, 8.2 and 8.3 shall apply.

8.6 Paragraphs 8.4 and 8.5 shall not apply in situations where there has been an Introduction by the Employment Business and where the Client subsequently introduces (or indirectly arranges the introduction of) the Temporary Worker to another person (for example an individual employer, a related party or another employment business/agency) and that introduction results in the direct employment of the Temporary Worker by that third party.

8.7 No refund of the introduction fee or of the extended hire fee will be paid in the event that the Engagement subsequently terminates.

8.8 VAT will be payable in addition to any fee due.

9. LIABILITY AND HANDLING OF DATA

9.1 Whilst every effort is made by the Employment Business to ensure reasonable standards of skills, integrity and reliability from the Temporary Workers carrying out the Assignments, no liability will be accepted by the Employment Business for any loss, expense or damage arising from any failure to provide a Temporary Worker for all or part of an Assignment or from the negligence, dishonesty or misconduct of the Temporary Worker. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence.

9.2 Temporary Workers provide their services under contracts for services entered into with the Employment Business. Temporary Workers are deemed to be under the supervision, direction and control of the Client during the Assignment and the Client shall be responsible for all acts, errors and omissions of the Temporary Worker. The Client will also comply in all respects with all statutes including, for the avoidance of doubt, the Working Time Regulations 1998, by-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client's own staff (excluding the matters specifically mentioned in Clause 7 above), including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Temporary Worker during all Assignments.

9.3 The Client shall also advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Temporary Worker and will assist the Employment Business in complying with its own obligations under the Working Time Regulations 1998 and under the Conduct of Employment Agencies and Employment Businesses Regulations 2003 by supplying any relevant information about the Assignment and the Client will not do anything to cause the Employment Business to be in breach of its obligations under the Working Time Regulations and the Conduct of Employment Agencies and Employment Businesses Regulations 2003. In particular the Client confirms his/her/its obligations to perform a thorough risk assessment of the proposed working location(s), equipment and working conditions. The Client hereby agrees to, without delay; provide details of any expenses payable by or to the Temporary Worker, the nature of the working location(s), equipment and working conditions and to provide a copy of the risk assessment carried out by the Client.

9.4 The Client shall also advise the Employment Business of any special experience, qualifications and any other authorisations which the Client considers are necessary or which the Temporary worker needs to have by law or by the requirements of any professional body in order to carry out the assignment.

9.5 In all cases the Client shall indemnify and keep indemnified the Employment Business against any costs, claims, damages and expenses incurred by the Employment Business arising out of any Assignment or any non-compliance with clauses 9.2, 9.3 and 9.4 and/or as a result of any breach of these Terms by the Client.

9.6 The Client recognises the need for the Employment Business to handle/process information relating to the Client and that the Employment Business may need to share such information with its agents or third parties as part of performing its duties. The Client recognises such obligations on the Employment Business and hereby consents to the handling, processing and divulging (whether in the

UK or elsewhere) of such information as may be necessary for the Employment Business (or its agents) to perform its duties.

9.7 The Client recognises that the Employment Business has obligations to ensure full compliance with the requirements of a range of legislative and other issues including, but not limited to, requirements of the Criminal Records Bureau and the relevant Social Care Inspectorate. The Client agrees that it will assist the Employment Business in meeting any obligations imposed by these and similar requirements.

9.8 The Hirer undertakes not to request the supply of an Agency Worker to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Hirer to perform the duties of a person on strike or taking official industrial action.

9.9 The Hirer shall inform the Employment Business in writing of any AWR Claim which comes to the notice of the Hirer as soon as possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the Hirer.

9.10 If the Agency Worker brings, or threatens to bring, any AWR Claim, the Hirer undertakes to take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business and at the Hirer's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.

9.11 All information relating to a Temporary Worker is confidential and where that information relates to an individual is also subject to the Data Protection Act 1998 ("DPA") and GDPR and is provided solely for the purpose of providing services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of Data Protection Laws in receiving and processing the data at all times. In addition information relating to the Employment Business's business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

10. POLICIES AND PROCEDURES

10.1 Where the Client is the patient for whom the Assignment is being performed, the Temporary Worker is precluded from assisting the Client in relation to making a will or from benefiting under the terms of any will or codicil made by the Client.

10.2 The Client will co-operate with the Employment Business in relation to any assessment of the risks at the premises where the Assignment is to be carried out and will provide all relevant information upon request to the Employment Business.

10.3 The Temporary Worker will be subject to the Employment Business's policies regarding administering and/or assisting with medication. The policy will also define the limits of the Temporary Worker's assistance and the tasks which may not be undertaken without specialist training. The Client shall not request the Temporary Worker to act in any way which is a breach of the said policies.

10.4 Where the Temporary Worker is supplied to a Client's own home, any third party owned equipment in the home shall not be used by the Temporary Worker unless the equipment is in a safe condition and the necessary checks have been undertaken by the provider of the equipment.

10.5 The Temporary Worker will seek the Client's informed consent in relation to all aspects of care.

10.6 The Employment Business' policies and procedures and the Service User Guide can be downloaded from www.markwacarepersonnel.com and are available on request.

11. STATEMENT OF PURPOSE & COMPLAINTS PROCEDURE

11.1 The Employment Business's statement of purpose is available on request from the Employment Business.

11.2 Where the Client has any cause for concern or wishes to make any complaint about the services provided during the Assignment, the Client shall submit such complaints to the Employment Business and such complaint shall be dealt with in accordance with the Employment Business's complaints procedure. A copy of the Employment Business's complaints procedure will be supplied to the Client and to anyone who requests a copy of the procedure on behalf of the Client.

12. TERMINATION AND CANCELLATION

12.1 The Hirer undertakes to supervise the Agency Worker sufficiently to ensure the Hirer's satisfaction with the Agency Worker's standards of work. If the Client reasonably considers that the services of the Temporary Worker are unsatisfactory, the Client may terminate the Assignment either by instructing the Temporary Worker to leave the Assignment immediately or by directing the Employment Business to terminate the Assignment immediately. The Employment Business may in such circumstances reduce, refund or cancel the charges for the time worked by that Temporary Worker, provided that the Assignment terminates within two hours of the Temporary Worker commencing the Assignment where the booking is for more than seven hours or within one hour for bookings of seven hours or less and also provided that notification of the unsuitability of the Temporary Worker is confirmed in writing to the Employment Business within 48 hours of the termination of the Assignment.

12.2 The Employment Business shall notify the Hirer immediately if it receives or otherwise obtains information which gives the Employment Business reasonable grounds to believe that any Agency Worker supplied to the Hirer is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith without prior notice and without liability. Notwithstanding, the Hirer shall remain liable for all Charges incurred prior to the termination of the Assignment.

12.3 The Hirer shall notify the Employment Business immediately and without delay and in any event within 1 hour if the Agency Worker fails to attend work or has notified the Hirer that they are unable to attend work for any reason.

12.4 If the Client wishes to reduce, cancel or amend the booked services of the Temporary Worker the Client must give the Employment Business at least 24 hours' notice. Failure to do so will result in a cancellation fee being charged equal to one day's fee.

12.5 If a Temporary Worker is required to work at a lower grade than for which they were booked a charge at the grade booked will be made.

13. FORCE MAJEURE

13.1 The Employment Business will use its best endeavours to provide the services of a Temporary Worker throughout the Assignment. Should the Employment Business's obligation to do so be materially interrupted or interfered with by an event of force majeure, then such obligation shall be suspended while the interference or interruption continues and the Employment Business will not be liable for any loss the Client suffers or costs she/he incurs as a consequence of the interference or interruption.

13.2 Both parties to this contract agree to use their best endeavours to minimize and reduce any period of suspension caused by an event of force majeure.

13.3 The expression 'an event of force majeure' includes but is not limited to fire, flood, casualty, lockout, strike, labour disputes, labour shortages, industrial action of any kind, unavoidable accident, breakdown of equipment, national calamity or riot, Acts of God, the enactment of any Act of Parliament or any other legally constituted authority, any cause or event arising out of war, or any other cause or event outside the reasonable control of either party to this contract.

14. CONFIDENTIALITY

14.1 The Employment Business undertakes to keep confidential all Relevant Terms and Conditions that the Hirer discloses to the Employment Business and not to use such information except for the purposes of compliance with the Agency Workers Regulations (including, for the avoidance of doubt and without limitation, when dealing with any request for information or complaint made by any Agency Worker or any AWR Claim).

14.2 Information relating to the Employment Business's business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

15. LAW

15.1 These Terms are governed by the law of England & Wales where the service is delivered in England and Wales and are subject to the exclusive jurisdiction of the Courts of England & Wales. Where the service is delivered in Scotland or Northern Ireland, the Terms are governed by the law of Scotland or Northern Ireland and are subject to the exclusive jurisdiction of the Courts of Scotland and Northern Ireland.

15.2 To the extent that any part of these Terms contravenes the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Regulations) then the Regulations shall apply. Such contravention shall not affect the enforceability of the remaining terms.

15.3 When the services of the Temporary Worker are provided via an intermediary (e.g. a limited company) and both the Temporary Worker and the intermediary have chosen not to be covered by the Regulations then, in accordance with the Regulations parts of these terms shall not apply. In particular any references to time periods in clause 6.1 shall not apply (so any fee shall be payable irrespective of periods for which the Temporary worker has worked) and clauses 6.4 and 6.5 shall not apply and the 8/14 weeks and 3 months referred to in 6.1 shall all be replaced by 4 months.

SCHEDULE 1 'COMPARABLE EMPLOYEE', 'QUALIFYING PERIOD' AND 'TEMPORARY WORK AGENCY'

'Comparable Employee' means as defined in Regulation 5(4) of the Agency Workers Regulations being an employee of the Hirer who:

- (a) works for and under the supervision of the Hirer and is engaged in the same or
- (b) broadly similar work as the Agency Worker having regard, where relevant, to whether the employee and the Agency Worker have a similar level of qualification and skill; and
- (c) works or is based at the same establishment as the Agency Worker or, where there is no comparable employee working or based at that establishment who satisfies the requirements of (a) above, works or is based at a different establishment and satisfies those requirements.

For the purpose of the definition of 'Qualifying Period' in clause 1 of these Terms, when calculating whether any weeks completed with the Hirer count as continuous towards the Qualifying Period, where:

- (a) the Agency Worker has started working during an assignment and there is a break, either between assignments or during an assignment, when the Agency Worker is not working;
- (b) the break is:
 - (i) for any reason and not more than six Calendar Weeks;
 - (ii) wholly due to the fact that the Agency Worker is incapable of working in consequence of sickness or injury and the break is 28 Calendar Weeks or less; paragraph
 - (iii) does not apply; and, if required to do so by the Employment Business, the Agency Worker has provided such written medical evidence as may reasonably be required;
 - (iii) related to pregnancy, childbirth or maternity and is at a time in a protected period, being a period beginning at the start of the pregnancy and ending at the end of the 26 weeks beginning with childbirth (being the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy) or, if earlier, when the Agency Worker returns to work;
 - (iv) wholly for the purpose of taking time off or leave, whether statutory or contractual, to which the Agency Worker is otherwise entitled which is:
 - i. ordinary, compulsory or additional maternity leave;
 - ii. ordinary or additional adoption leave;
 - iii. ordinary or additional paternity leave;
 - iv. time off or other leave not listed in paragraphs (iv)i, ii, or iii above; or
 - v. for more than one of the reasons listed in paragraphs (iv)i, ii, iii to iv above;
 - (v) wholly due to the fact that the Agency Worker is required to attend at any place in pursuance to being summoned for service as a juror and the break is 28 Calendar Weeks or less;
 - (vi) wholly due to a temporary cessation in the Hirer's requirement for any worker to be present at the establishment and work in a particular role for a pre-determined period of time according to the established custom and practices of the Hirer;
 - (vii) wholly due to a strike, lock-out or other industrial action at the Hirer's establishment; or
 - (viii) wholly due to more than one of the reasons listed in paragraphs (ii), (iii), (iv), (v), (vi) or (vii); and

- (c) the Agency Worker returns to work in the same role with the Hirer, any weeks during which the Agency Worker worked for the Hirer before the break shall be carried forward and treated as counting towards the Qualifying Period with any weeks during which the Agency Worker works for the Hirer after the break. In addition, when calculating the number of weeks during which the Agency Worker has worked, where the Agency Worker has started working in a role during an Assignment and is unable to continue working for a reason described in paragraph (b)(iii) or (b)(iv)i., ii, or iii., for the period that is covered by one or more such reasons, the Agency Worker shall be deemed to be working in that role with the Hirer for the original intended duration or likely duration of the relevant Assignment, whichever is the longer. For the avoidance of doubt, time spent by the Agency Worker working during an assignment before 1 October 2011 does not count for the purposes of the definition of 'Qualifying Period'.

'Temporary Work Agency' means as defined in Regulation 4 of the Agency Workers Regulations being a person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of:

- (a) supplying individuals to work temporarily for and under the supervision and direction of hirers; or
- (b) paying for, or receiving or forwarding payment for, the services of individuals who are supplied to work temporarily for and under the supervision and direction of hirers.

Notwithstanding paragraph (b) of this definition a person is not a Temporary Work Agency if the person is engaged in the economic activity of paying for, or receiving or forwarding payments for, the services of individuals regardless of whether the individuals are supplied to work for hirers. For the purpose of this definition, a 'hirer' means a person engaged in economic activity, public or private, whether or not operating for profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of that person.